

Chassen Brothers, Inc., d/b/a Ann's-Schneider Bakery and Local Union No. 50, Bakery, Confectionery & Tobacco Workers Union, AFL-CIO and Joseph Dones and Charles Skinner.
Cases 22-CA-9237, 22-RC-7887, 22-CA-9401, and 22-CA-9423

January 22, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On March 9, 1981, Administrative Law Judge Eleanor MacDonald issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed a brief in support of the Administrative Law Judge's Decision and in opposition to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt her recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

IT IS FURTHER ORDERED that the settlement agreement in Case 22-CA-9237 be, and it hereby is, reinstated.

IT IS FURTHER ORDERED that the objections to the election conducted on August 3, 1979, in Case 22-RC-7887, be, and they hereby are, overruled and that the results be, and they hereby are, certified.

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for Local Union No. 50, Bakery, Confectionery & Tobacco Workers Union,

¹ The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings.

AFL-CIO, and that said labor organization is not the exclusive representative of all the employees, in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge: This case was heard before me in Newark, New Jersey, on February 19, 20, 21, and 22 and March 11 and 13, 1980. The charge in Case 22-CA-9237 was filed on May 23, 1979; the charge in Case 22-CA-9401 was filed by Joseph Dones on August 1, 1979, and amended on August 20 and September 19, 1979; the charge in Case 22-CA-9423 was filed by Charles Skinner on August 8, 1979, and amended on August 21 and September 19, 1979. An informal settlement agreement in Case 22-CA-9237 was entered into on July 13, 1979, and was subsequently set aside by the Regional Director on September 21, 1979. The consolidated complaint issued on September 21, 1979, alleging that Respondent engaged in certain unfair labor practices in violation of Section 8(a)(1), (3), (4), and (5) of the Act including:

1. Engaging in threats, promises of benefits, interrogations, and solicitation of grievances (prior to execution of the informal settlement agreement).
2. Discharging Dones and Skinner for concerted activity (prior to the execution of the settlement agreement).
3. Engaging in harassment, interrogation, and threats, and creating the impression of surveillance (after the execution of the settlement agreement).
4. Giving certain employees money in order to refrain from voting in a Board election held on August 3, 1979.
5. Assigning Dones more arduous and less agreeable work after his reinstatement pursuant to the settlement agreement and issuing Dones warning letters and discharging Dones.
6. Assigning Skinner more arduous and less agreeable work after his reinstatement pursuant to the settlement agreement, and denying Skinner a wage increase and causing his termination.
7. Refusing to recognize and bargain collectively with Local Union No. 50, Bakery, Confectionery & Tobacco Workers Union, AFL-CIO, herein called Local 50, as the exclusive collective bargaining representative of its unit employees.

The complaint further alleges that the unfair labor practices set forth therein are so serious and substantial in character and effect as to warrant the entry of a remedial order requiring Respondent to recognize and bargain with Local 50 on an alleged majority of authorization cards from unit employees.

Respondent filed an answer denying the material allegations of the complaint and alleging that Dones and Skinner were discharged for cause.

In the representation case, a consent election was held pursuant to stipulation on August 3, 1979. After determination of the challenged ballots, the vote was eight for the Union and nine against union representation. One ob-

jection timely filed by the Union is before me for decision pursuant to the Order dated November 15, 1979, consolidating cases and referring the representation case to the Board.

Upon the entire record including my observations of the demeanor of the witnesses and after due consideration of the briefs filed by Respondent and the General Counsel in June 1980, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New Jersey corporation, operates a bakery engaged in the manufacture and wholesale and retail sale of baked goods in Jersey City, New Jersey, where it annually purchases and causes to be delivered to it, goods and materials valued in excess of \$50,000 directly from other enterprises located within the State of New Jersey, which other enterprises receive said goods and materials in interstate commerce directly from States other than the State of New Jersey. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that Local Union No. 50, Bakery, Confectionery & Tobacco Workers Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

I will consider first the General Counsel's allegations that Respondent engaged in unfair labor practices after the execution of the settlement agreement,¹ since a finding of failure to comply with the settlement agreement or of postsettlement violation is a prerequisite to a finding of violation based on presettlement conduct. *Interstate Paper Supply Company, Inc.*, 251 NLRB 1423 (1980).

A. Events Relating to Dones

Joseph Dones was one of the General Counsel's chief witnesses in this case. He testified that he was hired by Myron Chassen in September 1978, as a bench hand and helper. At first he worked 3 days a week on the oven and ran the cleaning machine, but subsequently his hours were changed so that he worked 6 days a week, excluding Saturday, from 1 or 2 a.m. until 10 or 11 a.m. Robert Chassen ran the bakery during most of these early morning hours.² Dones stated that he spent the bulk of his

time twisting pastry on the bench, but that he also performed other work as follows: unloading the truck on Tuesday, helping in the wrapping room several hours per week, cleaning the bathrooms once a week, taking out the garbage every morning, cleaning "downstairs" every morning for 1 hour, and cleaning the "icebox."

Dones testified that he was discharged in May 1979.³ As a result of charges filed by the Union, a settlement agreement was entered into and Dones was reinstated with payment of a sum for "net backpay." Dones testified that Leonard McGinley, the Union's business representative and organizer, told him that, from his reinstatement until the date of the consent election (August 3, 1979), Dones would work from 9 a.m. until 6 p.m. and that he would be excused from work on Sundays as well as the normal Saturday day off.

The need for an arrangement to last until the election arose from a change in the operations of the bakery. The uncontroverted testimony of several witnesses shows that, for some time prior to Dones' discharge, the bakery had been subject to repeated citations and threats of closure for uncleanness by the Board of Health. This was due, in part, to the lack of sufficient facilities for cleaning separate from the baking area. As a result, Respondent undertook certain construction and renovation work and created additional cleaning areas. Further, the hours of the employees who performed cleaning functions were changed so that they began to work at noon which was generally after most of the mixing and baking was completed. (The bakers worked from 2 or 3 a.m. until 11 or 12 a.m.). This system permitted a more thorough cleaning of the bakery premises.

The new system and new hours were instituted prior to the settlement discussions in July 1979, and, when Dones was to be reinstated, Myron or Robert Chassen requested that Dones work new hours from 12 noon to 8 or 9 p.m. However, as a result of Dones' protests that he would be unable to talk union with his coworkers because some of them would be gone by the time he began work, it was agreed that, until the day of the election, he would work from 9 a.m. to 6 p.m. Dones also testified that, as part of the settlement, he was excused from Sunday work so that he could function as a preacher. Before his discharge in May, Dones stated he had been excused by 11 a.m. on Sundays if the bakery were not too busy. With the new hours, this schedule would be impossible. Dones apparently believed that the Sunday excusal would be in effect beyond the election. However, Myron Chassen testified that his understanding of the settlement was that Dones would again work Sundays once the election was over. Chassen explained that Sunday was the busiest workday at the bakery and that he would never have agreed to excuse Dones from work on Sundays on a permanent basis.⁴ Further, there was resentment among the other employees at the special treatment afforded Dones. Myron Chassen testified that it had been his understanding from the settlement discussions that a settlement of the charge in Case 22-CA-9237 and a con-

¹ The settlement agreement was signed by the parties on July 13, and approved by the Regional Director on July 16, 1979.

² Myron and Robert Chassen, the two brothers who own and operate Respondent, are, respectively, secretary and president of Respondent. Myron Chassen is generally responsible for the operation of the bakery during normal business hours, while Robert Chassen is in charge of the premises in the early morning hours beginning at midnight while most of the mixing and baking is taking place. Robert Chassen personally conducts the mixing process. The hours worked by the two brothers are not rigidly fixed and they overlap. The bakery is a family enterprise that was formerly operated by the father and uncle of the Chassen brothers. The uncontradicted testimony shows that both Chassen brothers work side by side with their employees and perform many of the same tasks as their employees according to the particular requirements of the day. In fact, the testimony of all the witnesses clearly establishes that all employees, including the Chassen brothers, would normally lend a hand with any type of work that was available and needed to be done at the bakery.

³ The record shows Dones was discharged on May 21, 1979.

⁴ Other witnesses, including McGinley, agreed that Sunday was the busiest day in the bakery.

sent election would be obtained only if he agreed to the special conditions for Dones which were to last until the day of the election.

From Dones' testimony it is clear that he did not object to the requirement that after the election he would start work at noon as did the other employees who performed mostly cleaning work. Under the new system which was in force after his reinstatement, it is undisputed that Dones' working hours would not permit him to do much, if any, manufacturing, and that the tasks that remained to be performed would involve cleaning and other "porter" work.

Dones testified that pursuant to the settlement agreement he was to report to work on Tuesday, July 17, 1979, if certain personal business he was obliged to transact was completed by that date. He had promised to work even if he reported a little late. On direct examination, Dones testified that he was unable to report to work at all and that he therefore called the bakery and asked to speak to Myron Chassen in order to inform him of this fact. However, the woman who answered the phone hung up. Dones' wife also called the bakery, he stated, but the woman hung up on her as well. After having his recollection refreshed by looking at his telephone bill, Dones testified that he called the bakery twice. He also testified that he could not work because he was at the doctor's office. On cross-examination, Dones stated that he could not report to work late, as he had previously suggested he would do if he were able, because he was in court at the World Trade Center in New York City; although his appointment was for 11 a.m., the hearing did not conclude until 2 or 3 or 4 p.m. Dones stated that during a recess his wife had called the bakery. After counsel for Respondent called Dones' attention to the fact that Dones' phone bill indicated that calls had been made from Dones' home in New Jersey at 12:19, 12:31, and 12:35 p.m., Dones added the information that he had taken the train home during a recess and that he and his wife had called the bakery from their home. Counsel for the General Counsel did not seek to clarify this sequence of events on redirect examination, and so the record is barren of any further explanations which might make the testimony seem credible such as the amount of time required to travel back and forth from the World Trade Center, or the reason for Dones' original testimony that he was at his doctor's office.

From the time of his reinstatement until his discharge in August 1979, Dones testified that he did the "dirty work."⁵ He testified that he scraped hand trucks in the sun, washed the garage door, washed the floor with a hose and a hand scraper that required him to kneel down, and cleaned the freezers with the doors closed. Concerning the freezers, Dones testified at great length that he was not permitted by Myron Chassen to turn off the blowers and leave the door open while he cleaned and scraped the ice. Dones stated that it was the usual practice to turn off the blowers and keep the door open, although in response to a question by the General Coun-

sel he also testified that he had never seen anyone else clean the freezers.⁶

Dones testified that he spent a few hours cleaning floors every day, and that the areas where new floor had been installed as part of the renovations were "very easy" to clean compared to the condition that had existed previously. Dones stated that he still cleaned the bathroom after his reinstatement and also continued to take out the garbage. On cross-examination, Dones conceded that his post-reinstatement cleaning work resembled his prereinstatement work, except that he had to clean more carefully. Dones testified that after his reinstatement the bakery was like "a concentration camp" in that as soon as one task was finished he was given another, and that one day Robert told him not to talk so much.⁷

On Monday, July 23, 1979, Dones testified, he had a court appointment and was excused from work in advance by Robert Chassen. In August, Dones stated, he missed a day or two of work.

After having his attention directed to Friday, August 17, 1979, Dones testified that Myron Chassen told him that he had missed "quite a few Sundays" and that Dones would be fired if he did not start reporting to work on Sundays. Dones told Myron Chassen that the settlement agreement specified that he would not be required to work on Sundays and "you may as well let me go now." Chassen told Dones that the special arrangement was to apply only until the date of the election. Dones testified that he did not work the next Sunday, and that Myron Chassen discharged him the next Monday. In response to a leading question by the General Counsel, Dones stated that during the Friday conversation he had offered to work Sundays if his hours could be adjusted; however, Dones could not recall what Chassen's response had been.

McGinley testified that his understanding of the terms of Dones' reinstatement was that Dones was to work as a porter, not a baker, and that he was to be required to work only 5 days a week. McGinley stated that Dones would not have to work Sundays at all, and that this would not change after the election.

Myron Chassen testified that Dones was hired as a porter and that his work consisted primarily of cleaning, helping with the wrapping machine, and helping out generally. After Dones' reinstatement, Dones did no wrapping because, under the new work schedule, the wrapping was completed before Dones appeared. The testimony was corroborated by that of Benjamin Vandross, a witness called by the General Counsel.⁸ Vandross testified that, before Dones' discharge, he observed Dones at work and that his job consisted of porter work such as putting out garbage, cleaning the back of the bakery, and working on the wrapping machine. After

⁵ The General Counsel did not ask Dones to explain how he was aware of the usual practice if he had never observed it in the past.

⁷ Greg Simon, whose testimony and credibility are discussed below, testified that, after Dones' reinstatement, Myron Chassen stopped Simon from scraping the floors and said that he had someone to do the cleaning now and "that's the law." Chassen said Dones would clean.

⁸ Vandross signed an authorization card for the Union. I found Vandross to be a generally credible witness; his testimony was consistent and given in a forthright manner.

⁵ Dones could not recall any of the relevant dates in this proceeding. He was reinstated on July 18, and discharged again on August 20, 1979.

Dones' reinstatement, Vandross saw him scraping floors, and cleaning the freezer, storage room, bathroom, and baking racks. Vandross testified that the freezers were cleaned more often after Dones returned and that he heard Myron Chassen tell Dones not to leave the doors open because the cakes would get soft.

Myron Chassen also testified about the incidents related to by Dones. He stated that he has cleaned the freezers at the bakery, and that, in the summer months, the freezer doors must be kept closed during this process or the goods stored within will begin to melt. He also stated that coats and gloves are kept in the freezers for the use of employees working in them. This testimony was corroborated by Terry Smith. Smith also testified that at the urging of other unit employees he gave a sworn statement to the Board to the effect that Myron Chassen closed the door while Dones was working in the freezer without a coat on. In fact, Smith never observed such an incident. Smith also testified that his sworn statement omitted facts he was aware of; namely, that there are jackets in the freezer for the use of employees and that Dones worked in the freezers with the doors open on occasion. Significantly, Dones was not called to rebut this testimony.⁹

Concerning Dones' attendance record, Myron Chassen stated that Dones was discharged for absenteeism in May 1979, because he missed at least 1 day of work every week. After Dones' reinstatement pursuant to the settlement agreement, Chassen testified, Dones missed 6 days in a 3-week period and two warning letters were issued to him. Chassen said that in the past he simply would have fired an employee for that amount of absenteeism, but that he was advised by counsel to send warning letters instead.¹⁰ When Dones failed to report to work on Sundays after the elections, he was discharged. Myron Chassen testified that other full-time employees were absent less frequently than Dones, but that one employee who was absent the same number of days as Dones did not continuously miss Sundays. Chassen also testified that he had offered Dones reinstatement after August 20, if he would work Sundays, but Dones refused.

The General Counsel argues that Dones was discriminatorily discharged in violation of the Act, and contends that the unfavorable changes in Dones' working conditions, the insistence on Dones' working regular Sunday hours after the election, the use of warning letters to Dones, and other alleged acts of interference with the rights of unit employees all show that Respondent had union animus and prove that Dones' postsettlement discharge was an unfair labor practice. I note that the discussion in the General Counsel's brief relating to Dones, as well as to all the other issues in the case, presents a highly selective overview of the testimony and does not explain testimony unfavorable to the General Counsel's case. For reasons which I will discuss below, I am unable to share the General Counsel's view of the

facts. In more than a few instances, the General Counsel's brief overzealously misstates the evidence in the record, and the brief also refers to nonexistent pages of the transcript. (To give only two examples, the brief states that Chassen "refused" to alter Dones' Sunday hours when there is no testimony at all to this effect, and the brief refers to "page 168" of the transcript as the source for several important factual assertions when there is no p. 168 in the record).

Dones' testimony is characterized by internal inconsistencies and by a seeming willingness to tell whatever story is best suited to the General Counsel's case. Further, Dones' testimony is contrary in many respects to the testimony of other credible witnesses.

Dones' testimony contradicts that of McGinley, the union representative who was called by the General Counsel in this proceeding.¹¹ McGinley clearly and unequivocally stated that, as a result of the settlement, Dones was reinstated as a "porter." Yet Dones spent a lengthy time on the witness stand denying that he was a porter and seeking to show that Respondent discriminatorily imposed porter work on him after his reinstatement in order to make his work less pleasant and more difficult than it had been before his first discharge.¹² In the same manner, Dones indignantly described being required to clean the freezer with the door closed contrary to the "usual" practice but later admitted that he had never observed anyone else cleaning freezers. Dones claimed that he could not return to work on July 17, 1979, but while he testified that he was at the doctor's office, he later changed the story to provide details of a day spent at the World Trade Center. And the progression of Dones' testimony, detailed above, concerning the World Trade Center episode is of such a nature as to lead me to believe that Dones fabricated explanations as he went along and as he was confronted with prior inconsistencies in his testimony.

This tendency is nowhere better illustrated than in Dones' testimony concerning his solicitation of authorization cards for the Union, a subject not directly relevant to this portion of the case. On direct examination, Dones identified a number of cards and stated that they had been signed and filled out in his presence, or that they had been signed and completed and handed to him by the individual employees. Based on the testimony of McGinley and of the individual signers, however, it is clear that Dones' testimony was inaccurate and that he had absolutely no memory of the events to which he willingly testified to on behalf of the General Counsel. The record shows that Dones' direct testimony was in error concerning the circumstances of the completion and signature of cards from employees Gibbs, Smith, Pickett, Vandross, Skinner, and Mitchell.

In contrast to the testimony of Dones, Myron and Robert Chassen testified in a credible and forthright manner; their testimony was internally consistent, and

⁹ Terry Smith's testimony will be discussed more fully below.

¹⁰ The letter of July 24 states that Dones missed two out of the last seven working days, including July 17 which was unexcused due to lack of notification to Respondent. The letter of August 6, 1979, mentions further absences by Dones and requests that he again report for work on Sundays.

¹¹ McGinley testified in a calm, forthright manner and did not seek to evade cross-examination. I find that he was a credible witness.

¹² Further, Vandross' testimony about Dones' workload before and after his reinstatement makes it clear that Dones did substantial porter work before his initial discharge in May 1979.

they did not seek to evade questions on cross-examination. The General Counsel's brief points out that neither Myron nor Robert Chassen specifically denied uttering certain of the presettlement statements that are alleged to constitute violations of Section 8(a)(1) of the Act. Indeed, this candor leads me to believe that both Chassen brothers testified in a direct and unguarded way. The general character of their testimony comports with the fact that, when the Union's demand for recognition was received in May 1979, Respondent was not represented by experienced labor counsel, and it was only some time after charges were filed that Respondent obtained advice from labor counsel and negotiated the settlement agreement.

Since I have determined that Dones is not a credible witness, I must evaluate the issues relating to his testimony in light of this finding. Thus, I conclude that, by agreement of the parties, Dones was reinstated as a porter and that he was assigned substantially the same duties after his reinstatement as he had performed prior to his discharge on May 21, 1979. I find that any change in the manner in which he was asked to perform his duties was caused not by Respondent's desire to make his job more onerous and less pleasant, but by the reorganization and renovation of the bakery and by Respondent's desire to avoid further citations from the Board of Health. I also find that Dones was not required to work in a different manner from other employees and that Respondent's requirements as to his manner of cleaning the freezers, for example, were the same as those imposed by Respondent on other employees.

Turning to the question of whether Dones' excusal from Sunday work was to continue beyond the date of the election, I find that Myron Chassen's understanding of the arrangement is more reliable than that of Dones or McGinley. I have already explained that I do not regard Dones as a credible witness. Although I have found that McGinley is a credible witness, I believe his memory is less reliable than is Myron Chassen's on the subject of Sunday work for Dones. It is not plausible that Respondent would have agreed to excuse Dones from work on Sunday since it was acknowledged that Sunday is typically the busiest day of the week. It is much more likely that Respondent agreed, as it contends it did, to certain special conditions for Dones to last until the date of the election. From the demeanor of Myron and Robert Chassen and from their testimony, it is clear that they each have an intense commitment to the bakery and are familiar with the most minute details of the enterprise. Therefore, I find Myron Chassen's memory in the matter of Dones' Sunday hours more reliable than that of McGinley. I therefore find that Dones was properly expected to resume work on Sundays after the election.¹³

¹³ I note also the paucity of testimony by Dones, an otherwise loquacious witness, concerning the precise nature and requirements of his preaching duties. Dones did not testify as to the hours of his preaching duties nor their location, and the record is therefore barren of any specific information as to when he would have to be released on Sunday. This leads me to believe that Dones' commitments were rather vague, and reinforces my belief that the Union agreed that the Sunday excusal would last only until the date of the election. Further, Dones testified that before his first discharge he was excused early on Sunday only if he

Both Myron Chassen and Dones himself testified that Dones was fired because he refused to begin regular Sunday work once the election was over. Dones testified that he indicated to Chassen that, if Chassen were to insist on Sunday work, Chassen "may as well let me go now." Although Dones responded to a leading question from the General Counsel by stating that he had offered to adjust his Sunday hours, I do not credit this. Significantly, Dones could not recall what Chassen's response to this offer had been, although Dones did not testify that Chassen had refused his offer. (The General Counsel's brief is quite incorrect on this point.) Further, when Chassen offered reinstatement to Dones on condition that Dones work on Sundays, Dones did not at that time agree to return provided some adjustment could be made in his hours.

I also do not find that Respondent engaged in unlawful conduct when it issued warning letters to Dones concerning his absenteeism and his failure to work on Sundays. Dones was indeed absent frequently and he did refuse to work on Sundays. There is no evidence that Respondent had any other purpose than to follow advice of counsel and make a record of warnings. Nor has the General Counsel shown that any other employee had a record quite as bad as Dones.¹⁴ Finally, it is clear that Respondent repeatedly offered Dones a chance to continue working by improving his attendance record, especially his attendance on Sunday.

B. Events Relating to Skinner

Charles Skinner testified that he was hired as a baker's helper in April 1978, and that he was discharged on July 17, 1979. Skinner's testimony about the dates of his hiring, discharge, reinstatement, and second discharge was confused, as was much of the rest of his testimony. In fact, the record shows that Skinner was discharged on May 21, 1979, and that he was reinstated on July 17, 1979, pursuant to the settlement agreement.¹⁵ There is a dispute as to the actual date and circumstances of his second discharge which will be discussed below. Skinner's hours were from 2 or 3 a.m. until 11 a.m. or noon, Sunday through Friday. Before his discharge in May 1979, he made pastry on the belt, scaled dough (weighed it by portion), fried doughnuts, operated the oven, and helped load the oven. After his reinstatement, he again made pastry on the belt but, after a time, Robert Chassen assigned him to operate the two ovens. This work consisted of loading and unloading ovens, and of watching goods in the ovens.

Skinner testified that he asked Robert Chassen for assistance to unload the oven, but that he was not given

could be spared; this circumstance lends weight to Respondent's position on this issue.

¹⁴ I do not credit Dones' explanations that he gave notice of intended absences since, as discussed above, I do not believe him to be a credible witness. Further, I do not credit Dones' excuses for his absences, whether a doctor's appointment or a court appearance, since these stories seem to me to be fabricated.

¹⁵ Skinner testified in an inconsistent manner. He showed an extremely poor memory for the sequence of events, despite the extensive use of leading questions by the General Counsel during his direct testimony. Much of his testimony is so undecipherable as to be almost worthless.

help. He stated that Chassen told him "that was my job. If I didn't like it . . . go back to the labor board." On direct examination, Skinner testified that no other employees worked the ovens without assistance; however, Skinner later testified that "Paul and George" worked alone. Skinner also stated that he asked Robert Chassen for a raise but that he was refused. Skinner gave it as his opinion that he should have been earning more money because he was working on the ovens. However, on cross-examination, Skinner testified that he did not know how much other oven men earned. He stated that he believed that one oven man who was a long service employee earned more than he did, and he acknowledged that the long service man also performed mixing, a task Skinner did not perform. There was no general wage increase at this time.

Skinner testified that he was unable to get someone to watch the oven while he went upstairs to the bathroom but that he worked out a system for going upstairs while the ovens were loaded. Robert Chassen testified that he did not deny Skinner's proper requests for relief. Skinner testified that on August 6, 1979, he overproofed some crumb buns and Robert Chassen told him to "go home."¹⁶ Skinner thought he was fired but he nevertheless finished out the day. Skinner testified that he overproofed the buns because "I forgot about it," and that while he was unloading the big oven he could not take the crumb buns out. Although his testimony on this point is confused, a careful reading of Skinner's testimony convinces me that Skinner forgot about the crumb buns and only realized that they were overproofed while he was unloading an oven, at which point it was too late to prevent damage. Skinner was working without assistance during this occurrence, and he testified that the damage occurred because he had no help.

Following the incident of August 6, Skinner testified, he did not return to work until about August 17. He received a letter dated August 9, 1979, from Myron Chassen stating that Skinner had previously been warned concerning damage to \$700 worth of baked goods, and that Skinner had been absent from work on August 7, 8, and 9.¹⁷ The letter stated:

The purpose of this letter is to serve you with notice that your continued absence without notice or excuse will result in your dismissal.

Some time after receiving the letter, Skinner went back to the bakery. Upon seeing Robert Chassen, Skinner told him he "came back for my money and my clothes," and Chassen told him to get out. Skinner did not ask Chassen if he could go back to work.

Robert Chassen testified that the work of loading and unloading the ovens is a one man job. In fact, Chassen stated, some oven men also scale dough without assistance while loading and unloading but that Skinner was not asked to do this. The usual procedure is for one man

to scale the dough and another to put it in the oven; Chassen said that in that circumstance he would consider that the men were helping each other. From a careful comparison of Skinner's testimony with the testimony of Robert Chassen on this point, I believe that when Skinner testified that an oven man often had assistance, he had reference to the times when one man did scaling and the other loaded and unloaded the goods.

Robert Chassen testified that he assigned Skinner to the ovens because a previous oven man quit and Skinner was next in line to do the work. This testimony was not contradicted by any witness. Robert Chassen stated that after his reinstatement pursuant to the settlement agreement, Skinner "took his time. He walked away a lot and he was a little arrogant and I couldn't talk to him. . . . I had no choice. I had to put up with him." Chassen testified that Skinner had burned merchandise on numerous occasions.

Concerning Skinner's discharge, Robert Chassen testified that one day Skinner ruined a whole rack of coffee buns because he walked outside for coffee.¹⁸ Chassen was so upset because no more could be made that he told him to "go home for the day." He did not see Skinner thereafter. Both Robert and Myron Chassen testified that Skinner was fired because he was absent from work for 9 days. Apparently, a letter of discharge was sent to him.¹⁹ Myron Chassen testified that, after his discharge, Skinner returned to the bakery and threatened him.

The General Counsel asserts that Skinner's August discharge was in violation of Section 8(a)(1), (3), and (4), of the Act. An extended discussion of the General Counsel's brief is not required in that part of the case relating to Skinner since the brief is based on an erroneous view of the facts. Skinner's total inability to place in context the various incidents he was asked to relate and his inability to recall in what sequence these events took place (except in response to leading questions) leads me to believe that he had memorized a series of stories for the hearing in the instant proceeding and was unable to keep his stories straight. I will not, therefore, credit Skinner's testimony where it conflicts with that of Robert Chassen. I am convinced from my observation of Skinner and from a reading of the record that he had little recollection of many of the events he testified to and that much of his testimony had been suggested to him by someone else.

I find that Skinner was not harassed by being assigned to perform oven work in any way that was contrary to the usual practice at the bakery; even Skinner admitted that oven men often work alone. I find that Skinner was not improperly refused a wage increase; there was no testimony to show why he was entitled to an increase. I find that the warning letters were properly issued to Skinner for destruction of baked goods as claimed by Respondent. I find, as testified to by Robert Chassen, that Skinner was not fired on August 6, but that he was told to go home for the rest of the day. Skinner received a letter dated August 9, warning him that as he had been absent from work without excuse for 3 days he faced dis-

¹⁶ Skinner's testimony on this incident is not clear; at various points in the record, he placed the crumb bun incident before his reinstatement under the settlement agreement.

¹⁷ On July 24, 1979, Skinner was given a note signed by Robert Chassen listing goods improperly baked by Skinner and warning that he might be dismissed. Skinner denied some of the allegations in this note.

¹⁸ This is the "crumb bun" incident.

¹⁹ This letter was not introduced into evidence.

missal if he continued to be absent without notice or excuse. Skinner did nothing on receipt of this letter, and sometime later he returned to the bakery for his money and his clothes. He did not ask to be put back to work. Although, as set forth above, Robert Chassen candidly expressed a certain amount of resentment against Skinner and his "arrogant" postsettlement behavior, the General Counsel has not shown that this played any part in Skinner's termination. Rather, I find that Skinner gave ample cause to Respondent by damaging merchandise and by failing to report to work or to contact Respondent upon receipt of the August 9 letter.

C. Events Relating to Union Meetings and to the Election

The General Counsel presented the testimony of Greg Simon to show alleged instances of Employer surveillance and interference. Simon testified that he is a porter and that he works the hours of 4 to 10 or 11 p.m.; he stated that he was expected to work 6 days a week but that he occasionally did not work on Wednesdays.²⁰

Simon testified that Dones called a union meeting on Saturday in late July 1979 at the Golden Skillet Restaurant. He testified that he and Charles Howard and Terry Smith talked to Myron Chassen about this time and that Chassen asked them to go to the meeting and report back to him concerning what was discussed.²¹ Chassen then asked Simon who was for the Union and who would vote against representation. Simon testified that Myron Chassen told the three young men that their names were not on the list of eligible voters. Chassen allegedly told them that the Union was no good, that it slowed up business, and that one bakery which had a union was now closed.

On the Saturday of the meeting, Simon testified, he looked for the Golden Skillet with Howard and Smith but could not find it. The three then saw Myron Chassen near Newark Avenue, and he told them to look for the meeting and report back to him. Simon testified that they did not locate the meeting, but nevertheless, told Chassen that they attended it and that the fellows were drinking and saying "to vote for the Union." On cross-examination, when counsel for Respondent asked Simon about the lie involved in this report to Chassen, Simon testified that he did not lie and that Terry Smith did all the talking. After further cross-examination, Simon recalled that on this day the three young men saw employees Benjamin Vandross and Charles Skinner in a car; Vandross and Skinner told the three about the meeting and so enabled Terry Smith to tell Myron Chassen what had happened there. According to Simon, the three young men did not tell Vandross and Skinner about Chassen's interest in the meeting. It was during this encounter, Simon said, that Vandross told them they had a right to vote.

According to Simon, the day before the election of August 3, 1979, he was at work with Howard and Smith

when they saw Myron Chassen at or about 10 p.m.²² Chassen said "tomorrow" was the election, that they could not vote and he gave Smith \$30 "to get lost tomorrow." When the three of them went outside, Smith gave \$10 each to Simon and Howard.

On the day of the election, Simon testified, he, Charles Howard, and Terry Smith "got into Terry's car" and, with Terry Smith at the wheel they "went riding." Someone said: "[L]et's go around the bakery." (On cross-examination Simon testified that the car belonged to Smith's brother.) Simon stated that they drove to the bakery and parked in the public lot on the corner of Newark Avenue and Monmouth Street, and that their purpose was to vote in the election. The three young men then walked to another part of the lot toward First Street, the location at the back of the bakery where the election was being conducted in a garage area.²³ Before they left the lot or reached First Street, they saw Myron Chassen who stopped them and asked where they were going. Simon testified that Chassen said, "[Y]ou're not allowed to vote," and told them that their names were not on the list and that they should "go home, and come back to work this evening." After this incident, the three young men left. Simon stated that he, Smith, and Howard came to work at "four o'clock, on the dot" in the afternoon of the election, and that Chassen said, "thanks." On the next payday, Simon testified, there was \$30 extra stapled to the outside of each of their pay envelopes, and Myron Chassen said, "Thanks again."²⁴

Simon could not remember the day of the week on which the election was held; however, he gave a detailed account of his movements on that morning including a trip to an ice cream parlor. Simon did not recall seeing the union organizer, Leonard McGinley, near the bakery on that day. When McGinley testified, however, he said that on the day of the election, he had positioned himself on Monmouth Street near the bakery so that he could "observe the back where the election was being held." McGinley saw a car with Terry Smith and two other young black men in it which drove around the block once and then went on. McGinley did not see the car pull into the lot and park, nor did he see anyone emerge from the car. Further, he did not observe Myron Chassen talk to three men in the lot.

Charles Howard was called by Respondent and testified that he had been employed by Respondent for 1-1/2 years. From March through August 1979, he worked 6 days a week when there was work available. Howard testified that he recalled the day of the election, and that he remained at home and did not go to the bakery to vote in the morning while the election was held. Howard denied being in a car with Simon and Smith on the day of the election, and said that he had gotten to work by bus that afternoon.

²⁰ In fact, the payroll records for 1979 show that he often did not work a full week and that he often worked only 2 or 4 hours per day.

²¹ Simon, Howard, and Smith are high school students who work for Respondent after school hours.

²² The Employer's payroll records show that neither Simon nor Howard were at work on August 2, 1979, the day before the election, and that neither Simon nor Smith worked on the day of the election.

²³ The bakery faces Newark Avenue at the front and First Street at the rear. It is between Monmouth Street and Cole Street.

²⁴ This last payment is not alleged as a violation in the complaint.

On cross-examination, Howard acknowledged that in June 1979 he borrowed money for a bicycle from Myron Chassen, but he stated that he had long since paid it all back (at the rate of \$10 per week). He also testified that he was sometimes given extra money by Chassen for doing good work and that he received \$20 at Christmas. Howard denied being given any money by Myron Chassen before the election, and he explained that he did not vote because his mother did not want him to get involved with the Union or with the Labor Board. He recalled that Myron Chassen had told him when the election would be held, although Chassen did not tell him whether or not to vote.

Terry Smith was called by Respondent, he testified that he had been employed at the bakery for about 3 years. Smith stated that on the day of the election, he first arrived at the bakery in time to work at 4 p.m. He denied being in a car with Simon and Howard that morning or going to the bakery to vote in the election.²⁵

On cross-examination by the General Counsel, Smith acknowledged giving two sworn statements to the Board which were contrary to his testimony at the hearing. The statements, dated August 13 and 26, 1979, were introduced into evidence by the General Counsel. Smith testified that when he came to the Regional Office to give the statements he was accompanied by Greg Simon. The statement of August 13 is, in substance, to the following effect: On Friday, July 27, 1979, Myron Chassen asked Smith, Howard, and Simon to attend a union meeting and report back concerning statements made by Dones. Chassen also gave the young men \$30 "to go the shore" and not vote in the election. The three tried unsuccessfully to find the union meeting on July 28, 1979, and then met "Benny" and "Lee" as these two returned from the meeting. Benny and Lee told the three men what Dones said at the meeting, but when Smith, Howard, and Simon saw Myron Chassen a few minutes later, Smith told Chassen that he could not find the meeting and had not seen anyone. On July 29, a payday, Chassen asked about the meeting and later gave Smith extra money and said, "[T]hank you for not coming." The statement then reads, "I believe he was referring to the election." The statement of August 16, 1979, is to the following effect: On August 2, 1979, Chassen gave Smith \$30, mentioning a trip to the shore, and on August 3, 1979, Smith, Simon, and Howard appeared to vote and saw Myron Chassen who told them to go home and come back around 6 p.m.²⁶

Pursuant to cross-examination by the General Counsel, Smith stated that he was coerced into giving the sworn statements by Benny Vandross, Joe Dones, and Greg Simon who "threatened, abused and scared" him. Smith testified that initially Vandross and Dones told him to go to the Board and sign a statement and that he was beaten up by an unknown person when he failed to do so. Subsequently, when Greg Simon, Dones, and Vandross called him at home, Smith agreed to give a statement. After he gave the first statement, Smith testified, he was

threatened again by Dones and Vandross and a gun was mentioned. Further, Smith stated that Greg Simon had called him shortly before the hearing and stated that the General Counsel would help him get into the Army and that if he changed his testimony he would be "lynched." Before this call, Smith had told Simon that he was going to tell the truth at the hearing because he had spoken to a family friend who is a Jersey City police officer earlier in the week, and had been advised about the seriousness of the situation. Concerning the source for the untruths in his statements, Smith explained that Greg Simon coached him in the story and that Dones "put some more lies with it." Smith recalled being told to say that Myron Chassen asked them to go to the meeting, that he gave them money before and after the election and prevented them from voting, and that Dones worked in the freezer without a coat. Finally, Smith testified, Dones approached him while he waited to testify outside the court room and said, "[I]ts for your benefit, and if you tell the truth they're going to throw you in jail." He testified, in great detail, that on the day of the election he spent the morning with his girl friend and later went to work with Howard and Simon. Smith stated that the election was held on a Monday or Tuesday; he denied receiving extra money after the election.²⁷

After Smith's testimony was given, the General Counsel recalled Simon, Dones, and Vandross. Simon denied coercing Smith in any way, and stated that Smith had suggested giving an affidavit to the Board, and that Dones also suggested filing a complaint. Vandross denied threatening Smith; he stated, however, that he had called Smith at home about coming to the Board. Vandross testified that, on the night of the election, he and Lee Archer met Smith, Simon, and Howard and that they discussed what had happened and he told them that they were entitled to vote. Dones also called Smith after the election; however, Dones denied threatening Smith. Dones testified that Smith, Simon, and Howard told him about being chased from the polls and asked his advice, and that he told all three to file a complaint with the Board.

Myron Chassen testified that he arrived at the bakery at or about 7:30 a.m. on the day of the election. He decorated cakes with whipped cream until about 10:30 a.m. when the Board agent directed him to leave. Thereupon, both Chassen brothers and their counsel stayed in the bakery office for about one-half hour until an employee entered the office to say that a pot of whipped cream had been left out right near the office. At that point, Myron Chassen walked through the manufacturing area to the door of the garage where he attracted the Board agent's attention by waving to him. The Board agent directed Chassen to return to the office and the latter did so. Myron Chassen testified that he was concerned that the cream would spoil in the heat of the day, and that he wanted the Board agent's permission to refrigerate it. Chassen denied being near the parking lot and denied seeing either Smith, Howard, or Simon during the time the election took place.

²⁵ As set forth above, the payroll records show that Smith did not work on the day of the election.

²⁶ Many other subjects, not relevant to this discussion, are covered in Smith's statements.

²⁷ In fact, August 3, 1979, was a Friday.

Manifestly, a major issue in this case is the relative credibility of the three young men—Greg Simon, Charles Howard, and Terry Smith. Charles Howard testified in a careful, consistent, and forthright manner. He testified that his mother had strong feelings against his involvement with the Union and, for that matter, with the Board. I am convinced from his demeanor and from the nature of his replies to questions posed by counsel that he did indeed shun any involvement with the Union and that his testimony was in all respects truthful. Thus, I credit his testimony that he was not bribed, interrogated, or prevented from voting by Myron Chassen. As will be seen below, I do not credit any of Greg Simon's testimony about alleged unfair labor practices committed by Respondent.

There are many reasons, aside from the truthfulness of Howard's testimony, for discrediting the version of events given by Simon. For one, Simon's stories do not make sense. As an example, if Simon had indeed been asked by Myron Chassen to find the Golden Skillet meeting and report back to him, Simon would surely have mentioned this fact to Vandross and Skinner (two union supporters), when he met them on the day of the meeting and discussed with them what had taken place there. Vandross, a witness called by the General Counsel and whose testimony I credit, did not testify at all about his encounter; Vandross testified that he met the three young men after a postelection meeting which was held at a bar one block from the bakery and that he was accompanied by Lee Archer, not Skinner. Significantly, Simon would not accept responsibility for allegedly reporting back to Chassen and lying about the meeting; he testified that Terry Smith had done the talking. Another example of a story that does not make sense is Simon's version of the alleged bribe. Simon claims that the money was given to Terry Smith in order to insure that the three young men would not vote "tomorrow." However, the payroll records introduced into evidence by the General Counsel show that neither Simon nor Howard were at work on the day before the election. Further, no reason has been shown why Chassen would give the three any money to stay away from the election, and there is no testimony to show Chassen had any basis for believing they intended to vote. Their names were not on the list of eligibles, and Chassen had not been informed that they intended to cast ballots. Indeed, even Simon did not testify that he had expressed any intention of voting before the election.

Simon's story about the election day ride also strains credulity. Simon was able to testify in detail about the ride and the events of the day, but he could not recall seeing McGinley near the bakery during the election although the car allegedly drove close to where McGinley was standing. Further, if Simon had indeed been prevented from voting, why did he not immediately seek out the union organizer and make this fact known? McGinley, a witness called by the General Counsel and whose testimony I credit, had stationed himself so that he could observe the relevant locations during the election. McGinley saw a car with three youths in it, but he was unable to say that Simon or Howard was in the car. McGinley saw the car drive once around the bakery and then

depart. If the car had been parked and if the three young men had emerged and had been confronted by Myron Chassen, McGinley would have observed this. His failure to see any of the events testified to by Simon leads to the conclusion that these events did not occur.

Terry Smith admitted giving two false statements to the Board, and there is thus no need to dwell at length on the reasons for finding all of his testimony and his sworn affidavits open to serious question. Although it is difficult to sift fact from fiction in Smith's testimony, it is interesting to note that his first affidavit reads like a badly remembered version of Greg Simon's testimony: for example, the alleged bribe is given on the day of the Saturday union meeting and a second bribe is given before the election. This would seem to lend some credence to Smith's story that his affidavits are false and were given at the urging of Greg Simon and Joseph Dones who also provided the false details to be included in the affidavits. This is not to say, however, that I find his testimony at the hearing to be entirely reliable. For example, Smith gave a very detailed account of his supposed activities on the morning of the election, and yet he was unable to recall what day of the week he was testifying about, nor did he recall that he did not work on the day of the election. In view of the fact that Smith is a self-admitted teller of untruths and in view of the fact that it is impossible to determine when Smith might be giving accurate testimony, I shall disregard all of Smith's testimony and his affidavits. Although the General Counsel urges that Smith's affidavits should be credited, no basis has been shown to support a finding that the statements contained in the affidavits are true.

The General Counsel called Ulyssee Mitchell to testify concerning alleged instances of surveillance by Respondent.²⁸ Mitchell was hired as a baker's helper in 1978, and he was discharged on August 25, 1979, following an altercation with Robert Chassen during which the police were called. As Mitchell described it, the fracas arose over an order given by Myron Chassen to put away certain goods which was not promptly carried out by Mitchell. Mitchell was accused of "pushing" Robert Chassen and criminal charges were filed by both parties. According to Mitchell, Chassen did not touch him. After the police came, both Joseph Dones and one of the police officers advised Mitchell to leave the scene and "cool off." Mitchell was clearly hostile to both Myron and Robert Chassen, and volunteered the information concerning Robert Chassen that "he's no match for me. I could have washed up the floor with him." On direct examination, Mitchell was confused despite the extensive use of leading questions by the General Counsel, and testified as though he was telling a story by rote. Further, Mitchell resisted counsel's questions on cross-examination and answered evasively.

In response to a series of leading questions by the General Counsel, Mitchell stated that he had called a meeting at the Lucky Seven bar on the Saturday before the election, and that on the next day Robert Chassen asked him if he had attended the meeting. Mitchell alleg-

²⁸ Mitchell signed a card for the Union and was known to support the Union.

edly answered, "[N]o . . . I went to Staten Island." Mitchell testified that employee Paul Mueller was 5 feet away when this conversation took place, and that, when Robert Chassen went over to Mueller's work station to look for something, Mueller said: "I was in the bar. I should have found out who all was in there." Thereupon, according to Mitchell, Robert Chassen said: "That's a good idea. Go over to the bar today and find out who all was in the bar, in the meeting." Mitchell testified that, on the next Tuesday, he asked Robert Chassen: "Didn't you tell Paul to go and find out who all went to the meeting." According to Mitchell, Chassen acknowledged that he had and further said that the Union would not win "because we have the majority of the votes in the back." Chassen continued by saying: "But you can vote the way you want to vote . . . because no one would ever know."

Mitchell testified in response to questions by the General Counsel that he had observed Dones' duties after the latter was reinstated and that Dones was given "filthy work" such as cleaning racks in the hot sun, "clean out refrigerators with the motors on . . . got on top of steam things and cleaned them off." Mitchell did not explain how he could observe Dones at work at this time: during the summer of 1979, Mitchell worked in the wrapping room and he began work at 2 a.m., while Dones did not appear until 9 a.m. and worked in other areas of the bakery. The nature of Mitchell's testimony on the subject of Dones, and the manner in which it was given convinces me that Mitchell was testifying to matters of which he had no direct knowledge.

In evaluating Mitchell's testimony concerning alleged instances of interrogation and surveillance, I have taken into account his gratuitous expression of hostility to Robert Chassen, his demeanor while testifying, the General Counsel's extensive use of leading questions on direct examination and his unreliable testimony on the subject of Dones. Further, I have considered the likelihood that the story related to by Mitchell is accurate. I have determined that Mitchell is not a reliable witness and that he should not be credited. Although no other witness testified about these events, and Mitchell's testimony is uncontradicted, I am not convinced that the testimony is truthful or accurate. The story told by Mitchell is incredible on its face. As discussed above, certain presettlement statements by both Robert and Myron Chassen, admitted in the testimony of both brothers, were in the nature of interrogations, threats, and the like. The record is clear, however, that once labor counsel was retained by Respondent and the settlement agreement entered into, neither of the brothers made speeches to employees or discussed the Union with employees in informal meetings. Yet the General Counsel would have us believe that less than 1 week before the election, after compliance with the settlement agreement including posting of a notice and reinstatement of two alleged discriminatees, Robert Chassen approached a known union adherent and asked him about a union meeting and further asked another employee to obtain information about the meeting in the presence of this same union activist. It may be that Mitchell dimly remembered some occasion when Robert Chassen may have engaged in improper

conduct. However, since the General Counsel supplied the time and place of the union meeting to Mitchell in his very first question about the transaction, Mitchell had no opportunity to try to remember when the conversations occurred. The use of a leading question here is particularly crucial to my evaluation of the testimony because several meetings were held at the bar, and Mitchell should have been permitted to testify of his own recollection concerning the timing of Chassen's remarks. As the record stands, it may be that Mitchell was testifying about a premeeting conversation which took place before the settlement agreement was executed.

Further, there is testimony by Myron Chassen that he was especially friendly with certain employees including a few who told him early in the Union's campaign that they did not favor union representation. Mueller is one of these named employees. If the Chassen brothers wished to spy on the union meeting, it is not reasonable to suppose they would approach Mueller in front of a known union supporter. It is even less likely that Robert Chassen would have admitted such surveillance to Mitchell 3 days before the election. The testimony of both brothers shows that they were well aware of the consequences of the alleged unfair labor practices committed before the settlement agreement, and it is most unlikely that Robert Chassen would have admitted a further unfair labor practice to one of the Union's chief supporters right before the election was to take place.

Since I do not find Mitchell to be a credible or reliable witness, I am unable to find that Respondent engaged in acts of interrogation and surveillance as alleged by the General Counsel.

In summary, I find and conclude that the General Counsel has not shown any violations by Respondent in connection with the union meetings or the election.

D. The Presettlement Allegations

On September 21, 1979, the Regional Director vacated and set aside the settlement agreement. As I have found that no unfair labor practices were committed by Respondent after the execution of the settlement agreement, I also find that the Regional Director had no grounds for setting aside the settlement agreement. Therefore, I shall recommend that the settlement agreement in Case 22-CA-9237 be reinstated, and it is therefore unnecessary to make any findings concerning the alleged unfair labor practices predating the settlement agreement. *Deister Concentrator Company, Inc.*, 253 NLRB 358 (1980).

E. The Refusal To Bargain

The General Counsel maintains that the unfair labor practices alleged herein are so serious and substantial in character and effect as to undermine the alleged majority status of the Union, and that a bargaining order should issue pursuant to *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575 (1969). In view of my findings that none of the unfair labor practices alleged by the general Counsel did in fact take place, I conclude that Respondent has not violated Section 8(a)(5) of the Act and that there is no basis for the issuance of a bargaining order pursuant to the rationale of *Gissel*.

CONCLUSIONS OF LAW

1. Chassen Brothers, Inc., d/b/a Ann's-Schneider Bakery, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local Union No. 50, Bakery, Confectionary & Tobacco Workers Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Based on the findings of fact set forth above, I conclude that Respondent has not violated Section 8(a)(1), (3), (4), or (5) of the Act as alleged by the General Counsel, nor violated the Act in any other manner.

THE REPRESENTATION PROCEEDING

The objection filed in connection with this proceeding is that Respondent prevented Greg Simon, Terry Smith, and Charles Howard from entering the polling place and voting in the election on August 3, 1979. This objection is coextensive with certain of the unfair labor practices alleged, as to which have made a finding above that they

are without merit. Therefore, I find no merit in the Objection.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER²⁹

The complaint is dismissed in its entirety.

IT IS FURTHER ORDERED that the settlement agreement in Case 22-CA-9237 be reinstated.

IT IS FURTHER ORDERED that the objections to the election conducted on August 3, 1979, in Case 22-RC-7887 be overruled and that a certification of results shall issue.

²⁹ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.